

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Darrell Bennett,)	
)	Civil Action No. 6:09-1486-JFA-WMC
Petitioner,)	
)	
vs.)	<u>REPORT OF MAGISTRATE JUDGE</u>
)	
Warden, FCI-Williamsburg,)	
)	
Respondent.)	
_____)	

The petitioner brought this action seeking relief pursuant to Title 28, United States Code, Section 2254. On October 21, 2009, the respondent filed a motion to dismiss or, in the alternative, for summary judgment. By order of this court filed October 22, 2009, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment dismissal procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the petitioner elected not to respond to the motion.

As the petitioner is proceeding *pro se*, the court filed a second order on December 4, 2009, giving the petitioner through December 28, 2009, to file his response to the motion to dismiss or, in the alternative, for summary judgment. The petitioner was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The petitioner elected not to respond.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989), *cert. denied*, 493 U.S. 1084 (1990).

January 8, 2010
Greenville, South Carolina

s/William M. Catoe
United States Magistrate Judge